

October 25, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Notification of *Ex Parte* Presentation of Time Warner Cable,
Implementation of Section 304 of the Telecommunications Act of 1996;
Commercial Availability of Navigation Devices; Compatibility Between Cable
Systems and Consumer Electronics Equipment, CS Docket No. 97-80, PP
Docket No. 00-67**

Dear Ms. Dortch:

On October 24, 2007, Glenn Britt, CEO of Time Warner Cable, Inc. ("TWC"), Kevin Leddy, Senior Vice President, Strategy and Development, Justin Lilly, and the undersigned, met with Chairman Kevin Martin; his Senior Legal Advisor, Michelle Carey; Catherine Bohigian, Chief of the Office of Strategic Planning and Policy Analysis; and Monica Desai, Chief of the Media Bureau. In addition, Glenn Britt, Kevin Leddy, and I met with Commissioner Adelstein and his Legal Advisor Rudy Brioché, and Messrs. Britt and Leddy and myself were joined by Lynn Yaeger of TWC during a meeting with Commissioner Capps and his Senior Legal Advisor, Rick Chessen. Below is a summary of the arguments we presented at these meetings.

The Commission should pursue an all-MVPD solution for two-way plug-and-play devices. Such a technology-neutral approach represents the best solution for consumers, because it would enable them to purchase devices that work with any MVPD's service. An all-MVPD solution has the support of not only cable's MVPD competitors, including Verizon and Echostar, but many others such as Intel, Panasonic, Cisco, CCIA, and Public Knowledge.

Alternatively, if the Commission decides to pursue a cable-specific solution, OpenCable is the only viable option, as it would promote innovation and otherwise advance the Commission's objectives. OpenCable is real and is happening in the marketplace *today*. To date, TWC already has deployed OpenCable at more than two-thirds of its headends and has placed more than 225,000 OpenCable set top boxes in consumers' homes. Moreover, TWC will have OpenCable deployed nationwide by the 2008 holiday season.

The OpenCable Platform will deliver numerous benefits to consumers. It is a voluntary marketplace solution developed by the cable industry in cooperation with the CE industry, consistent with Congress's intent. OpenCable allows the delivery of *all* existing and future cable services to subscribers, and will support new third-party applications and services as well as innovation by CE manufacturers. In addition, OpenCable already allows CE manufacturers to produce any type of device — television, personal computer, or set-top box — and have it interact with and get access to all of a cable operator's content and services. OpenCable also is supported by major content providers, including MPAA, major studios and leading program networks, since it will protect content and presentation of content while facilitating the availability of new and innovative services to consumers.

In contrast to these benefits, the CEA "DCR+" proposal would spell disaster for consumers. The CEA proposal would allow DCR+ devices to strip out existing and future two-way services. This would confuse and frustrate consumers and stifle innovation by cable operators and content producers alike. Indeed, innovative services that consumers already use or are looking forward to — such as TWC's innovative StartOver™ and LookBack™ services — would be unavailable to consumers who purchase DCR+ devices. CEA simply ignores the fact that cable innovation today occurs in the network — not just the device — and its heavy-handed proposal would grind that creative process to a halt.

Contrary to CEA's suggestion, DCR+ devices would *not* be available by the 2008 holiday season. Significant development, implementation, and testing work would be required before any device could be commercially available. No work has been done, and not a single CE company has committed to build even one DCR+ device.

Moreover, studios and content producers oppose DCR+ because it would not protect against piracy, would permit content presentation to be disaggregated, would limit consumers' access to high-value content, and would discourage the creation of new and innovative features and services.

In addition to these incurable policy flaws, the CEA proposal would run afoul of Section 629. Congress imposed a narrow mandate for the Commission to adopt rules to ensure the competitive availability of navigation *devices*. Yet DCR+ would take the Commission well outside the scope of that directive by imposing one-sided regulations on the cable industry designed to enable CE manufacturers to disaggregate and repackage the *services* that cable operators provide to their subscribers. Indeed, CEA is asking the Commission to regulate these services down to the precise technical specifications by which cable operators deliver video on demand ("VOD"), pay per view, electronic program guides ("EPG"), and switched digital video services, including the data that EPG and VOD applications employ. This has been the key point of dispute from the very beginning of the negotiations between CE and cable.

Finally, besides asking the Commission to exceed its statutory authority, CEA invites constitutional and administrative-law violations by seeking to foist substantial burdens on cable operators alone. While CEA's proposal would seriously impede cable operators' ability to innovate, competitors would be free from any such constraints. Such a regulatory disparity would be plainly unjustified as a legal matter, even apart from its adverse policy implications.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Teplitz", written in a cursive style.

Steven N. Teplitz